

Calendar No. 549

105TH CONGRESS }
2d Session }

SENATE

{ REPORT
105-310

NATIONAL WILDLIFE REFUGE SYSTEM IMPROVEMENT ACT OF 1998

SEPTEMBER 8, 1998.—Ordered to be printed

Mr. CHAFEE, from the Committee on Environment and Public
Works, submitted the following

REPORT

[To accompany S. 2317]

The Committee on Environment and Public Works, to which was referred a bill (S. 2317) to improve the National Wildlife Refuge System, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND OBJECTIVES OF THE LEGISLATION

The first National Wildlife Refuge was established on Pelican Island in 1903 by President Roosevelt. What started out as one small island in Florida now includes 514 refuges, totaling approximately 93 million acres. The National Wildlife Refuge System is the only network of Federal lands devoted primarily to wildlife. The refuge system includes a wide variety of the nation's ecosystems: tundra, deserts, forests, rivers, marshes, prairie potholes, swamps, mountains, prairie grassland and islands.

S. 2317 was drafted by the Fish and Wildlife Service and introduced at the request of the Administration by Senator Chafee. This legislation makes several changes to the National Wildlife Refuge System. The bill removes three areas from the Refuge System because they have lost the wildlife values. The bill modifies the name of the Klamath Forest National Wildlife Refuge in Oregon. Finally, the bill amends the National Wildlife Refuge System Administration Act of 1966 to provide a lower penalty for unintentional violations of the Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 sets forth the short title for this bill as the “National Wildlife Refuge System Improvement Act of 1998”.

Section 2. Upper Mississippi River National Wildlife and Fish Refuge

Section 2 transfers 37.36 acres within the Upper Mississippi River Wildlife and Fish Refuge in Minnesota to the U.S. Army Corps of Engineers (the Corps). This area has been developed for recreational purposes and has lost its original wildlife values. The Corps manages the adjoining lands for recreational purposes, and transfer of this area to the Corps will increase management efficiency.

Section 3. Killcohook Coordination Area

Section 3 eliminates U.S. Fish and Wildlife Service secondary jurisdiction over 1,439.26 acres in Delaware and New Jersey, known as the “Killcohook Coordination Area”. Executive Order Number 6582, issued February 3, 1934, established the area as a migratory bird refuge, subject to the continued availability of the land to the Corps for utilization as a dredge spoil disposal site. Executive Order Number 8648, issued January 23, 1941, designated the area as a National Wildlife Refuge, subordinate to the primary use by the Corps. Over the years the area has become covered with spoil and now has no remaining waterfowl value. In addition to terminating the Service’s jurisdiction over this area, section 3 revokes the Executive Orders.

Section 4. Lake Elsie National Wildlife Refuge

Section 4 removes an easement that allows the Service to prohibit hunting of migratory birds on 634.7 acres of land and water at Lake Elsie, North Dakota. The easement was granted to the Service by Executive Order Number 8152, issued June 12, 1939. Although the easement permits the Service to maintain a waterfowl refuge, the easement lands are privately owned and the State of North Dakota owns the lake. Substantial development in the area has reduced the suitability of the area for migratory birds to such an extent that the refuge designation is meaningless. In addition to terminating the Service’s jurisdiction over this area, section 4 revokes the Executive Order.

Section 5. Klamath Forest National Wildlife Refuge

Section 5 changes the name of the “Klamath Forest National Wildlife Refuge” to the “Klamath Marsh National Wildlife Refuge”. The current name leads visitors to assume that the area is a National Forest, which causes misunderstandings about what activities are permitted.

Section 6. Violation of National Wildlife Refuge System Administration Act

Section 6 reduces the penalty for unintentionally committed violations of the National Wildlife Refuge System Administration Act

of 1966 (the Act). Currently, all violations are Class A misdemeanors with a maximum prison sentence of one year. This section lowers the penalty for unintentional violations (those not “knowingly” committed) to a Class B misdemeanor, with a maximum prison sentence of 180 days. Unlike Class B misdemeanors, Class A misdemeanors would require a showing that the person acted “knowingly,” that is, acted voluntarily and intentionally, not through ignorance, mistake, or accident. The “knowingly” requirement, however, does not require proof that the person acted with knowledge that his or her acts were unlawful.

The bill, as introduced, also included new authority for forfeiture of equipment used to aid the commission of a violation of the Act, upon conviction of a Class A misdemeanor. In addition, it included language incorporating the administrative process used to seize, forfeit, and condemn property for a violation of U.S. customs laws. Although both of these provisions were subsequently deleted as a result of an amendment adopted by the committee, the need for this additional authority should be reevaluated after the Service has had an opportunity to implement and assess the effectiveness of the new two-tiered penalty structure.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill. The reported bill will have no regulatory impact. This bill will not have any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 2095 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not directly impose any private sector mandates.

LEGISLATIVE HISTORY

S. 2317 was introduced on July 16, 1998 by Senator Chafee at the request of the Administration. No hearings were held on this bill. On Wednesday, July 29, 1998 the Committee on Environment and Public Works held a business meeting to consider this bill. Senator Chafee offered an amendment during the full committee business meeting that strikes the forfeiture provision in the bill. The amendment was adopted by voice vote. S. 2317, as amended, was favorably reported out of the committee by voice vote.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 19, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2317, the National Wildlife Refuge System Improvement Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for Federal spending), who can be reached at 226-2860, and Hester Grippando (for government receipts), who can be reached at 225-2720.

Sincerely,

JUNE E. O'NEILL,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S.2317, National Wildlife Refuge System Improvement Act of 1998, as ordered reported by the Senate Committee on Environment and Public Works on July 29, 1998.

CBO estimates that enacting S. 2317 would have no effect on Federal discretionary spending. The bill could affect governmental receipts; therefore, pay-as-you-go procedures would apply, but CBO estimates that any such effect would be negligible. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of State, local, or tribal governments.

S. 2317 would transfer jurisdiction over certain wildlife refuge lands from the U.S. Fish and Wildlife Service (USFWS) to other Federal and nonfederal entities. These transfers would have no effect on the budget of either the USFWS or the receiving agency.

The bill also would reduce the penalty for unintentional violations of the National Wildlife Refuge System Act by recategorizing them from Class A misdemeanors to Class B misdemeanors, thus making them easier to prosecute. The change would lower the maximum fine for such violations from \$100,000 to \$5,000. Based on information provided by the USFWS, CBO estimates that this provision would have a negligible effect on governmental receipts because any receipts forgone as a result of the reduction in the maximum penalty is likely to be more or less offset in any given year by additional fines collected as a result of an increase in prosecutions.

The CBO staff contacts are Deborah Reis (for Federal spending), who can be reached at 226-2860, and Hester Grippando (for governmental receipts), who can be reached at 226-2720. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

United States Code

TITLE 16—CONSERVATION

CHAPTER 5A—PROTECTION AND CONSERVATION OF WILDLIFE

* * * * *

SUBCHAPTER III—ENDANGERED SPECIES OF FISH AND WILDLIFE

§ 668dd. National Wildlife Refuge System

SEC. 4. (a)(1) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the “National Wildlife Refuge System” (referred to herein as the “System”), which shall be subject to the provisions of this section, and shall be administered by the Secretary through the United States Fish and Wildlife Service. With respect to refuge lands in the State of Alaska, those programs relating to the management of resources for which any other agency of the Federal Government exercises administrative responsibility through cooperative agreement shall remain in effect, subject to the direct supervision of the United States Fish and Wildlife Service, as long as such agency agrees to exercise such responsibility.

(2) The mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

(3) With respect to the System, it is the policy of the United States that—

(A) each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established;

(B) compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;

(C) compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; and

(D) when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.

(4) In administering the System, the Secretary shall—

(A) provide for the conservation of fish, wildlife, and plants, and their habitats within the System;

(B) ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans;

(C) plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystems of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats, and to increase support for the System and participation from conservation partners and the public;

(D) ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that first protects the purposes of the refuge, and, to the extent practicable, that also achieves the mission of the System;

(E) ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which the units of the System are located;

(F) assist in the maintenance of adequate water quantity and water quality to fulfill the mission of the System and the purposes of each refuge;

(G) acquire, under State law, water rights that are needed for refuge purposes;

(H) recognize compatible wildlife-dependent recreational uses as the priority general public uses of the System through which the American public can develop an appreciation for fish and wildlife;

(I) ensure that opportunities are provided within the System for compatible wildlife-dependent recreational uses;

(J) ensure that priority general public uses of the System receive enhanced consideration over other general public uses in planning and management within the System;

(K) provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting;

(L) continue, consistent with existing laws and interagency agreements, authorized or permitted uses of units of the System by other Federal agencies, including those necessary to facilitate military preparedness;

(M) ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges; and

(N) monitor the status and trends of fish, wildlife, and plants in each refuge.

(5) No acquired lands which are or become a part of the System may be transferred or otherwise disposed of under any provision of law (except by exchange pursuant to subsection (b)(3) of this section) unless—

(A) the Secretary determines with the approval of the Migratory Bird Conservation Commission that such lands are no longer needed for the purposes for which the System was established; and

(B) such lands are transferred or otherwise disposed of for an amount not less than—

(i) the acquisition costs of such lands, in the case of lands of the system which were purchased by the United States with funds from the migratory bird conservation fund, or fair market value, whichever is greater; or

(ii) the fair market value of such lands (as determined by the Secretary as of the date of the transfer or disposal), in the case of lands of the System which were donated to the System.

The Secretary shall pay into the migratory bird conservation fund the aggregate amount of the proceeds of any transfer or disposal referred to in the preceding sentence.

(6) Each area which is included within the System on January 1, 1975, or thereafter, and which was or is—

(A) designated as an area within such System by law, Executive order, or secretarial order; or

(B) so included by public land withdrawal, donation, purchase, exchange, or pursuant to a cooperative agreement with any State or local government, any Federal department or agency, or any other governmental entity,

shall continue to be a part of the System until otherwise specified by Act of Congress, except that nothing in this paragraph shall be construed as precluding—

(i) the transfer or disposal of acquired lands within any such area pursuant to paragraph (5) of this subsection;

(ii) the exchange of lands within any such area pursuant to subsection (b)(3) of this section; or

(iii) the disposal of any lands within any such area pursuant to the terms of any cooperative agreement referred to in subparagraph (B) of this paragraph.

(b) In administering the System, the Secretary is authorized to take the following actions:

(1) Enter into contracts with any person or public or private agency through negotiation for the provision of public accommodations when, and in such locations, and to the extent that the Secretary determines will not be inconsistent with the primary purpose for which the affected area was established.

(2) Accept donations of funds and to use such funds to acquire or manage lands or interests therein.

(3) Acquire lands or interests therein by exchange (A) for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition, or (B) for the right to remove, in accordance with such terms and conditions as he may prescribe, products from the acquired or public lands within the System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(4) Subject to standards established by and the overall management oversight of the Director, and consistent with standards established by this Act, to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge.

(5) Issue regulations to carry out this Act.

(c) No person shall [knowingly] disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: *Provided*, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to the effective date of this Act unless subsequently withdrawn under other authority of law. With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act, nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations.

(d)(1) The Secretary is authorized, under such regulations as he may prescribe, to—

(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: *Provided*, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe unless the Secretary finds that

the taking of any species of migratory game birds in more than 40 percent of such area would be beneficial to the species; and

(B) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.

(2) Notwithstanding any other provision of law, the Secretary may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary, at the option of the Secretary, either (A) in lump sum the fair market value (determined by the Secretary as of the date of conveyance to the grantee) of the right-of-way, easement, or reservation; or (B) annually in advance the fair market rental value (determined by the Secretary) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available or the loan of equipment or personnel; except that (A) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and (B) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.).

(3)(A)(i) Except as provided in clause (iv), the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety. The Secretary may make the determinations referred to in this paragraph for a refuge concurrently with development of a conservation plan under subsection (e).

(ii) On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge.

(iii) Wildlife-dependent recreational uses may be authorized on a refuge when they are compatible and not inconsistent with public safety. Except for consideration of consistency with State laws and regulations as provided for in subsection (m), no other determinations or findings are required to be made by the refuge official

under this Act or the Refuge Recreation Act for wildlife-dependent recreation to occur.

(iv) Compatibility determinations in existence on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997 shall remain in effect until and unless modified.

(B) Not later than 24 months after the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997, the Secretary shall issue final regulations establishing the process for determining under subparagraph (A) whether a use of a refuge is a compatible use. These regulations shall—

(i) designate the refuge official responsible for making initial compatibility determinations;

(ii) require an estimate of the timeframe, location, manner, and purpose of each use;

(iii) identify the effects of each use on refuge resources and purposes of each refuge;

(iv) require that compatibility determinations be made in writing;

(v) provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purposes of a refuge or the mission of the System;

(vi) provide for the elimination or modification of any use as expeditiously as practicable after a determination is made that the use is not a compatible use;

(vii) require, after an opportunity for public comment, reevaluation of each existing use, other than those uses specified in clause (viii), if conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use, except that, in the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation required by this clause shall examine compliance with the terms and conditions of the authorization, not examine the authorization itself;

(viii) require, after an opportunity for public comment, reevaluation of each compatible wildlife-dependent recreational use when conditions under which the use is permitted change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a conservation plan under subsection (e) or at least every 15 years, whichever is earlier; and

(ix) provide an opportunity for public review and comment on each evaluation of a use, unless an opportunity for public review and comment on the evaluation of the use has already been provided during the development or revision of a conservation plan for the refuge under subsection (e) or has otherwise been provided during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

(4) The provisions of this Act relating to determinations of the compatibility of a use shall not apply to—

(A) overflights above a refuge; and

(B) activities authorized, funded, or conducted by a Federal agency (other than the United States Fish and Wildlife Service) which has primary jurisdiction over a refuge or a portion of a refuge, if the management of those activities is in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the refuge governing the use of the refuge.

(e)(1)(A) Except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.)), the Secretary shall—

(i) propose a comprehensive conservation plan for each refuge or related complex of refuges (referred to in this subsection as a “planning unit”) in the System;

(ii) publish a notice of opportunity for public comment in the Federal Register on each proposed conservation plan;

(iii) issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located; and

(iv) not less frequently than 15 years after the date of issuance of a conservation plan under clause (iii) and every 15 years thereafter, revise the conservation plan as may be necessary.

(B) The Secretary shall prepare a comprehensive conservation plan under this subsection for each refuge within 15 years after the date of enactment of the National Wildlife Refuge System Improvement Act of 1997.

(C) The Secretary shall manage each refuge or planning unit under plans in effect on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997, to the extent such plans are consistent with this Act, until such plans are revised or superseded by new comprehensive conservation plans issued under this subsection.

(D) Uses or activities consistent with this Act may occur on any refuge or planning unit before existing plans are revised or new comprehensive conservation plans are issued under this subsection.

(E) Upon completion of a comprehensive conservation plan under this subsection for a refuge or planning unit, the Secretary shall manage the refuge or planning unit in a manner consistent with the plan and shall revise the plan at any time if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly.

(2) In developing each comprehensive conservation plan under this subsection for a planning unit, the Secretary, acting through the Director, shall identify and describe—

(A) the purposes of each refuge comprising the planning unit;

(B) the distribution, migration patterns, and abundance of fish, wildlife, and plant populations and related habitats within the planning unit;

(C) the archaeological and cultural values of the planning unit;

(D) such areas within the planning unit that are suitable for use as administrative sites or visitor facilities;

(E) significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit and the actions necessary to correct or mitigate such problems; and

(F) opportunities for compatible wildlife-dependent recreational uses.

(3) In preparing each comprehensive conservation plan under this subsection, and any revision to such a plan, the Secretary, acting through the Director, shall, to the maximum extent practicable and consistent with this Act—

(A) consult with adjoining Federal, State, local, and private landowners and affected State conservation agencies; and

(B) coordinate the development of the conservation plan or revision with relevant State conservation plans for fish and wildlife and their habitats.

(4)(A) In accordance with subparagraph (B), the Secretary shall develop and implement a process to ensure an opportunity for active public involvement in the preparation and revision of comprehensive conservation plans under this subsection. At a minimum, the Secretary shall require that publication of any final plan shall include a summary of the comments made by States, owners of adjacent or potentially affected land, local governments, and any other affected persons, and a statement of the disposition of concerns expressed in those comments.

(B) Prior to the adoption of each comprehensive conservation plan under this subsection, the Secretary shall issue public notice of the draft proposed plan, make copies of the plan available at the affected field and regional offices of the United States Fish and Wildlife Service, and provide opportunity for public comment.

(f) **[Any] PENALTIES.**—

(1) *KNOWING VIOLATIONS.*—Any person who violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.

(2) *OTHER VIOLATIONS.*—Any person who otherwise violates or fails to comply with any of the provisions of this Act (including a regulation issued under this Act) shall be fined under title 18, United States Code, or imprisoned not more than 180 days, or both.

(g) Any person authorized by the Secretary to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or egg

thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the Secretary, in accordance with law. The Director of the United States Fish and Wildlife Service is authorized to utilize by agreement, with or without reimbursement, the personnel and services of any other Federal or State agency for purposes of enhancing the enforcement of this Act.

(h) Regulations applicable to areas of the System that are in effect on the date of enactment of this Act shall continue in effect until modified or rescinded.

(i) Nothing in this section shall be construed to amend, repeal, or otherwise modify the provision of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460K—460K-4) which authorizes the Secretary to administer the areas within the System for public recreation. The provisions of this section relating to recreation shall be administered in accordance with the provisions of said Act.

(j) Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(k) Notwithstanding any other provision of this Act, the Secretary may temporarily suspend, allow, or initiate any activity in a refuge in the System if the Secretary determines it is necessary to protect the health and safety of the public or any fish or wildlife population.

(l) Nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of fish and resident wildlife on lands or waters that are not within the System.

(m) Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.

(n)(1) Nothing in this Act shall—

(A) create a reserved water right, express or implied, in the United States for any purpose;

(B) affect any water right in existence on the date of enactment of the National Wildlife Refuge System Improvement Act of 1997; or

(C) affect any Federal or State law in existence on the date of the enactment of the National Wildlife Refuge System Improvement Act of 1997 regarding water quality or water quantity.

(2) Nothing in this Act shall diminish or affect the ability to join the United States in the adjudication of rights to the use of water pursuant to the McCarran Act (43 U.S.C. 666).

(o) Coordination with State fish and wildlife agency personnel or with personnel of other affected State agencies pursuant to this Act shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

* * * * *

United States Code

TITLE 16—CONSERVATION

CHAPTER 8—UPPER MISSISSIPPI RIVER WILD LIFE AND FISH REFUGE

§ 722. Acquisition of lands and water

The Secretary of the Interior is authorized to acquire, by purchase, gift, or lease, such areas of land, or of land and water, situated between Rock Island, Illinois, and Wabasha, Minnesota, on either side of or upon islands in the Mississippi River which are not used for agricultural purposes, as he determines suitable for the purposes of this chapter, and any such area when acquired shall become a part of the [Upper Mississippi River Wild Life and Fish Refuge] *Upper Mississippi River National Wildlife and Fish Refuge* (referred to in this chapter as the “refuge”).

* * * * *

8UNITED STATES CODE

TITLE 25—INDIANS

CHAPTER 14—MISCELLANEOUS

* * * * *

SUBCHAPTER XIII—KLAMATH TRIBE: TERMINATION OF FEDERAL SUPERVISION

* * * * *

§ 564w-1. Klamath Indian Forest and Klamath Marsh Notwithstanding the provisions of sections 564d and 564e of this title, and all Acts amendatory thereof—

(a) DESIGNATION OF BOUNDARIES

The tribal lands that comprise the Klamath Indian Forest, and the tribal lands that comprise the Klamath Marsh, shall be designated by the Secretary of the Interior and the Secretary of Agriculture, jointly.

(b) SALES; TERMS AND CONDITIONS

The portion of the Klamath Indian Forest that is selected for sale pursuant to section 564d(a)(3) of this title to pay members who withdraw from the tribe shall be offered for sale by the Secretary of the Interior in appropriate units, on the basis of competitive bids, to any purchaser or purchasers who agree to manage the forest lands as far as practicable according to sustained yield procedures so as to furnish a continuous supply of timber according to plans to be prepared and submitted by them for approval and inclusion in the conveyancing instruments in accordance with specifications and requirements referred to in the invitations for bids: Provided, That no sale shall be for a price that is less than the realization value of the units involved determined as provided in subsection (c) of this section. The terms and conditions of the sales shall be prescribed by the Secretary. The specifications and minimum requirements to be included in the invitations for bids, and

the determination of appropriate units for sale, shall be developed and made jointly by the Secretary of the Interior and the Secretary of Agriculture. Such plans when prepared by the purchaser shall include provisions for the conservation of soil and water resources as well as for the management of the timber resources as hereinbefore set forth in this section. Such plans shall be satisfactory to and have the approval of the Secretary of Agriculture as complying with the minimum standards included in said specifications and requirements before the prospective purchaser shall be entitled to have his bid considered by the Secretary of the Interior and the failure on the part of the purchaser to prepare and submit a satisfactory plan to the Secretary of Agriculture shall constitute grounds for rejection of such bid. Such plans shall be incorporated as conditions in the conveyancing instruments executed by the Secretary and shall be binding on the grantee and all successors in interest. The conveyancing instruments shall provide for a forfeiture and a reversion of title to the lands to the United States, not in trust for or subject to Indian use, in the event of a breach of such conditions. The purchase price paid by the grantee shall be deemed to represent the full appraised fair market value of the lands, undiminished by the right of reversion retained by the United States in a nontrust status, and the retention of such right of reversion shall not be the basis for any claim against the United States.

The Secretary of Agriculture shall be responsible for enforcing such conditions. Upon any reversion of title pursuant to this subsection, the lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended.

(c) APPRAISALS; NOTICE TO CONGRESSIONAL COMMITTEES; APPROPRIATION; REALIZATION VALUE; REPORT TO CONGRESSIONAL COMMITTEES

Within sixty days after August 23, 1958 the Secretary of the Interior shall contract by negotiation with three qualified appraisers or three qualified appraisal organizations for a review of the appraisal approved by the Secretary pursuant to section 564d(a)(2) of this title. In such review full consideration shall be given to all reasonably ascertainable elements of land, forest, and mineral values. Not less than thirty days before executing such contracts the Secretary shall notify the chairman of the House Committee on Interior and Insular Affairs and the chairman of the Senate Committee on Interior and Insular Affairs of the names and addresses of the appraisers selected. The cost of the appraisal review shall be paid from tribal funds which are made available for such purpose, subject to full reimbursement by the United States, and the appropriation of funds for that purpose is authorized. Upon the basis of a review of the appraisal heretofore made of the forest units and marsh lands involved and such other materials as may be readily available, including additional market data since the date of the prior appraisal, but without making any new and independent appraisal, each appraiser shall estimate the fair market value of such forest units and marsh lands as if they had been offered for sale on a competitive market without limitation on use during the interval between the adjournment of the Eighty-fifth Congress and the

termination date specified in section 564e(b) of this title. This value shall be known as the realization value. If the three appraisers are not able to agree on the realization value of such forest units and marsh lands, then such realization values shall be determined by averaging the values estimated by each appraiser. The Secretary shall report such realization values to the chairman of the House Committee on Interior and Insular Affairs and to the chairman of the Senate Committee on Interior and Insular Affairs not later than January 15, 1959. No sale of forest units that comprise the Klamath Indian Forest designated pursuant to subsection (a) of this section shall be made under the provisions of this subchapter prior to April 1, 1959.

(d) UNSOLD FOREST UNITS AND MARSH LANDS; TITLE AFTER PUBLICATION IN FEDERAL REGISTER; AGGREGATE REALIZATION VALUE; APPROPRIATION

If all of the forest units offered for sale in accordance with subsection (b) of this section are not sold before April 1, 1961, the Secretary of Agriculture shall publish in the Federal Register a proclamation taking title in the name of the United States to as many of the unsold units or parts thereof as have, together with the Klamath Marsh lands acquired pursuant to subsection (f) of the section, an aggregate realization value of not to exceed \$90,000,000, which shall be the maximum amount payable for lands acquired by the United States pursuant to this subchapter.

Compensation for the forest lands so taken shall be the realization value of the lands determined as provided in subsection (c) of this section, unless a different amount is provided by law enacted prior to the proclamation of the Secretary of Agriculture. Appropriation of funds for that purpose is authorized. Payment shall be made as soon as possible after the proclamation of the Secretary of Agriculture. Such lands shall become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended. Any of the forest units that are offered for sale and that are not sold or taken pursuant to subsection (b) or (d) of this section shall be subject to sale without limitation on use in accordance with the provisions of section 564d of this title.

(e) SALE OF RETAINED LANDS TO SECRETARY OF AGRICULTURE

If at any time any of the tribal lands that comprise the Klamath Indian Forest and that are retained by the tribe are offered for sale other than to members of the tribe, such lands shall first be offered for sale to the Secretary of Agriculture, who shall be given a period of twelve months after the date of each such offer within which to purchase such lands. No such lands shall be sold at a price below the price at which they have been offered for sale to the Secretary of Agriculture, and if such lands are reoffered for sale they shall first be reoffered to the Secretary of Agriculture. The Secretary of Agriculture is authorized to purchase such lands subject to such terms and conditions as to the use thereof as he may deem appropriate, and any lands so acquired shall thereupon become national forest lands subject to the laws that are applicable to lands acquired pursuant to the Act of March 1, 1911 (36 Stat. 961), as amended.

(f) **【KLAMATH FOREST NATIONAL WILDLIFE REFUGE】** *Klamath Marsh National Wildlife Refuge*; appropriation

The lands that comprise the Klamath Marsh shall be a part of the property selected for sale pursuant to section 564d(a)(3) of this title to pay members who withdraw from the tribe. Title to such lands is taken in the name of the United States, effective the earliest date after September 30, 1959, when the Secretary of the Interior determines that funds for the payment of the purchase price are available from the sale of stamps under the Migratory Bird Hunting Stamp Act of March 16, 1934, as amended (16 U.S.C. 718 et seq.). Such lands are designated as the **【Klamath Forest National Wildlife Refuge】** *Klamath Marsh National Wildlife Refuge*, which shall be administered in accordance with the law applicable to areas acquired pursuant to section 4 of the Act of March 16, 1934 (48 Stat. 451), as amended or supplemented (16 U.S.C. 718d). Compensation for said taking shall be the realization value of the lands determined in accordance with subsection (c) of this section, and shall be paid out of funds in the Treasury of the United States, which are authorized to be appropriated for that purpose.

(g) HOMESITES

Any person whose name appears on the final roll of the tribe, and who has since December 31, 1956, continuously resided on any lands taken by the United States by subsections (d) and (f) of this section, shall be entitled to occupy and use as a homesite for his lifetime a reasonable acreage of such lands, as determined by the Secretary of Agriculture, subject to such regulations as the Secretary of Agriculture may issue to safeguard the administration of the national forest and as the Secretary of the Interior may issue to safeguard the administration of the **【Klamath Forest National Wildlife Refuge】** *Klamath Marsh National Wildlife Refuge*.

(h) ADMINISTRATION OF OUTSTANDING TIMBER SALES CONTRACTS

If title to any of the lands comprising the Klamath Indian Forest is taken by the United States, the administration of any outstanding timber sales contracts thereon entered into by the Secretary of the Interior as trustee for the Klamath Indians shall be administered by the Secretary of Agriculture.

(i) RIGHT OF UNITED STATES TO USE ROADS

All sales of tribal lands pursuant to subsection (b) of this section or pursuant to section 564d of this title on which roads are located shall be made subject to the right of the United States and its assigns to maintain and use such roads.

